Document 32

Filed 03/21/2008

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I, Marc H. Greenberg, declare:

- 1. I am an attorney licensed by the State of California, admitted to practice before this Court since 1979, and I am co-counsel for Defendants William Tull, Daniel Gibby and Gibby Novelties, LLC. I am authorized by my clients to make this Declaration in support of their Motion for Summary Judgment, filed herewith.
- 2. On the afternoon of March 10, 2008, I conducted the deposition of the Plaintiff, Paul Montwillo, in this action. Mr. Montwillo was represented in his deposition by his attorney, Stephen A. Sommers.
- During the course of the deposition, a series of documents were identified and marked 3. as Exhibits to the deposition. Two of the marked deposition exhibits were comprised of several documents marked collectively, specifically deposition Exhibit Number 5 (consisting of two pages depicting the back of the Trailer Trash Doll Edition 1 and Edition 2 respectively) and Exhibit Number 7 (consisting of the front page (back page was not produced) of five separate copyright registration certificates for five different doll designs).
- Seven of the nine Exhibits marked in the deposition of Plaintiff Montwillo are referenced in Defendants' Memorandum of Points and Authorities filed in support of their Motion for Summary Judgment. They have been renumbered to avoid confusion. In the case of the copyright registration certificates, they have been renumbered as separate exhibits for this Motion. The renumbered Exhibits referenced in the Memorandum of Points and authorities are as follows:

Item	Deposition Exhibit	Memo Exhibit
Stipulated Injunction - Mattel v. In-Jean-lou	s 3	1
Partnership Agreement	2	2
Copyright Notice on Doll Boxes	5	3
Bankruptcy Petition & Schedules	6	4
Copyright Certificate – Talking Pregnant Dol	I 7	5
MONTWILL V. TULL, ET AL	USDC Action No. C 07 3947 SI	

	Copyright Certificate – Talking Boy Doll	7	6	
	Copyright Certificate - Trailer Trash Doll	7	7	
	Copyright Certificate – Redhead Drag Queen Doll	7	8	
	Copyright Certificate - Blonde Drag Queen Doll	7	9	
	Letter 7/12/04 from P. Montwillo to D. Wong	4	10	
	A true and correct copy of each of these ter	n documents, made fro	m the copies attached	
	as exhibits to the deposition transcript of the depos			
	and renumbered as set forth herein.			
	4. The Memorandum of Points and Authorities	also contains citations	s to deposition	
	testimony of Plaintiff Paul Montwillo. Attached here			
	true and correct copies of the deposition transcript			
	testimony excerpts may be found. The pages attac			
	follows: Pages 49, 50, 52, 53, 70, 71, 75, 76, 77, 8			
			, , ,	
	I certify under penalty of perjury under the laws of the	ne United States of Am	nerica that the	
н	foregoing is true and correct, and that I am able to testify competently thereto.			
ш	Executed in San Francisco, California on March 19,			
	Dated:			
		01 -		
	M.	and Se	and	
	Ma <b>y</b> c H.	. Greenberg		

QUINN EMANUEL URQUHART & OLIVER, LLP 1 Adrian M. Pruetz (Bar No. 118215) Crady L. White (Bar No. 169157) 2 Anna Y. Joo (Bar No. 183148) 865 South Figueroa Street, 10th Floor 3 Los Angeles, California 90017-2543 (213) 624-7707 Attorneys for Plaintiff Mattel, Inc. 6 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 SAN FRANCISCO HEADQUARTERS MATTEL, INC., a Delaware 11 CASE NO. C-97-0012 EFL corporation, 12 Plaintiff, STIPULATED INJUNCTION BY 13 DEFENDANT IN-JEAN-IOUS, INC. 14 IN-JEAN-IOUS, INC., a 15 California corporation; PAUL HANSEN, an individual; VARIOUS JOHN DOES, JANE DOES, 16 and XYZ COMPANIES, 17 Defendants. 18 19 20 21 22 , 23 **DEFENDANT'S EXHIBIT** 24 Howwille 25 26 27

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Plaintiff Mattel, Inc. and defendant In-Jean-Ious, 2  $\|$  Inc., by their attorneys, hereby stipulate as follows with respect to this action:

In-Jean-Ious, Inc. and its principals, directors, Α. officers, agents, servants, employees, successors and assigns, and all those in active concert or participation with them, will immediately and permanently cease manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, importing, exporting, promoting or publicly displaying any product or thing bearing any simulation, reproduction, counterfeit, copy or confusingly similar likeness of Mattel's BARBIE® doll line Trademarks, BARBIE® doll line Copyrights, BARBIE® doll line Product or Packaging Trade Dress or  $\mathtt{KEN}^{\oplus}$  Product Trade Dress, or engaging in any other activity constituting an infringement of Mattel's BARBIE® doll line Trademarks, BARBIE® doll line Copyrights, BARBIE® doll line Product or Packaging Trade Dress, KEN® Product Trade Dress or of Mattel's rights in, or to use or to exploit, said trademarks, copyrights and trade dress or constituting any dilution of Mattel's name, reputation or good will, including but not limited to:

Imitating, copying or making unauthorized use of Mattel's Registered Trademarks in its BARBIE® line of dolls, which includes the  $\text{KEN}^{\otimes}$  doll and other  $\text{BARBIE}^{\otimes}$  doll family and friend dolls, including but not limited to Mattel's Registered Trademarks Nos. 689,055, 726,935, 741,208, 768,397, 774,892, 799,068, 884,564, 907,137, 1,000,125, 1,461,136, 1,476,981, 1,476,090, 1,476,981, 1,477,905,

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1,493,304, 1,503,153, 1,506,108, 1,549,304, 1,564,784, 1,564,789, 1,567,336, 1,572,146, 1,687,244, 1,710,196, 1,773,571, 1,760,729, 1,780,437, 1,897,052, 1,940,997, 1,947,330, 1,988,932, 1,995,873, 1,996,483, 2,016,054, 2,016,384 and 2,037,634 (hereinafter "Barbie Trademarks").

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- 2. Imitating, copying or making unauthorized use of Mattel's Registered Copyrights in the BARBIE® line of dolls, which includes the KEN® doll and other BARBIE® doll family and friend dolls, and packaging for the BARBIE® line of dolls and products associated with the BARBIE® line of dolls, including but not limited to Mattel's Certificates of Copyright Registration Nos. GP 121682, RE 280637, RE 280638, RE 374906, RE 664481, RE 664482, VA 121837, VA 121923, VA 157488, VA 157489, VA 214712, VA 222223, VA 222225, VA 226313, VA 286513, VA 287403, VA 290561, VA 290562, VA 297202, VA 323785, VA 351455, VA 370521, VA 373201, VA 376038, VA 377302, VA 426477, VA 454723, VA 623672, VA 639942, VA 722238 (hereinafter "Barbie Copyrights").
- Imitating, copying or making unauthorized use of Mattel's BARBIE® doll line Packaging Trade Dress, including but not limited to the following elements:
  - (a) background or trim in specific shades of pink;
  - (b) the name of the products in yellow and/or white words:
  - the BARBIE® doll line trademarks scripted (c) in white.

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- Imitating, copying or making unauthorized use of Mattel's BARBIE® doll line Product Trade Dress defined by at least the following elements:
  - the unique proportions of the BARBIE® (a) doll's hour-glass shaped body, and
  - the BARBIE® doll's particular set of facial (b) features which alert the public as to the source of the BARBIE® doll as Mattel.
- Imitating, copying or making unauthorized use of Mattel's KEN® Product Trade Dress defined by at least the following elements:
  - (a) a particular body shape, and
  - the KEN® doll's particular set of facial (d) features which alert the public as to the source of the KEN® doll as Mattel.
- Assisting, aiding or abetting any other person or business entity in engaging or performing any of the activities referred to in subparagraphs 1 through 5 above.
- In consideration of this Stipulated Injunction, ₿. Mattel hereby dismisses its claims against defendant In-Jean-Ious; provided, however that this Court will retain jurisdiction

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#### VERIFICATION

S	STATE OF CALIFORNIA, COUNTY OF  I have read the foregoing	
	X CHECK APPLICAB	and know to
☐ th	nose matters which are stated on information and belief, as	and as to those matters I believe them to be true.
tr	eason. I am informed and believe and on that ground al	ation for and on its behalf, and I make this verification for that allege that the matters stated in the foregoing document are set of my own knowledge except as to those matters which are I believe them to be true.
th Ex	party to this action. Such party is absent from the county of a nis verification for and on behalf of that party for that reason are matters stated in the foregoing document are true, xecuted on	aforesaid where such attorneys have their offices, and I make on. I am informed and believe and on that ground allege that
Ï	declare under penalty of perjury under the laws of the Sta	ate of California that the foregoing is true and correct.
<del></del>	Type of Print Name  PROOF OF SI  1013A (3) CCP Revise	
I a 86	I am employed in the country of LOS ANGE.  I am employed in the country of LOS ANGE.  The improvement is a country of LOS ANGE.  LOS ANGE.  The improvement is a country of the within action in the country of the within action in the country of th	SLES ales , State of California on; my business address is:
by by Lewi Morg	placing the true copies thereof enclosed in sealed envelope placing the original IX a true copy thereof enclosed in its D. Barr, Esq. genstein & Jubelirer Market Plaza	terested parties in this action
🔀 вү	MAIL  *I deposited such envelope in the mail at  The envelope was mailed with postage thereon fully prepa  As follows: I am "readily familiar" with the firm's practice of the	tice of collection and processing correspondence for mailing.
Exec	osit for mailing in affidavit.  cuted on April 1  **(BY PERSONAL SERVICE) I delivered such envelope cuted on 19	97 at Los Angeles California by hand to the offices of the addressee.
بيا (Stat	te) I declare under penalty of perjury under the laws of	of the State of California that the above is true and correct, oper of the bar of this court at whose direction the service was
	Martha P. Herrera	Martha F. Nenera

Type or Print Name stuart's exprook timebaver (reviseo 6/1/38) New discovery law 2000 and 2081 CCP. (May be used in California State or Federal Courts)

Signature

, BY MAIL BIGMATURE MUST BE OF PERSON DEPOSITING ENVELOPE (N MAIL BLOT, BOX, OR BAC)

"(FOR PERSONAL SERVICE SIGNATURE MUST BE THAY OF MESSENGER)

**EXHIBIT 2** 

#### Partnership Agreement



This contract is a binding agreement between William Tull Jr. and Paul Montwillo (d.b.a. Hansen), concerning their responsibilities in their partnership in the business known as "Arsenic and Apple Pie".

William Tull Jr. will be primarily responsible for the financial investment of startup costs, and upkeep until the business shows a profit. Mr. Tull is also responsible for bookkeeping, sales, and distribution.

Paul Montwillo will be primarily responsible for Art Direction, Design, and Advertising of the product line. This would include such things as: corporate identification, product design, package design, web site design and maintenance, and print advertising.

Both parties will share the responsibility of marketing, and any of the fore-mentioned responsibilities, should a need arise.

In return for their efforts each party shall receive 50% of the net profits from the business, after Mr. Tull has been returned his initial investment plus interest at the current a.p.r.

If either party should decide not to fulfill his designated responsibilities within the partnership, the remaining partner shall retain exclusive rights to all the products of their combined efforts until that point in time.

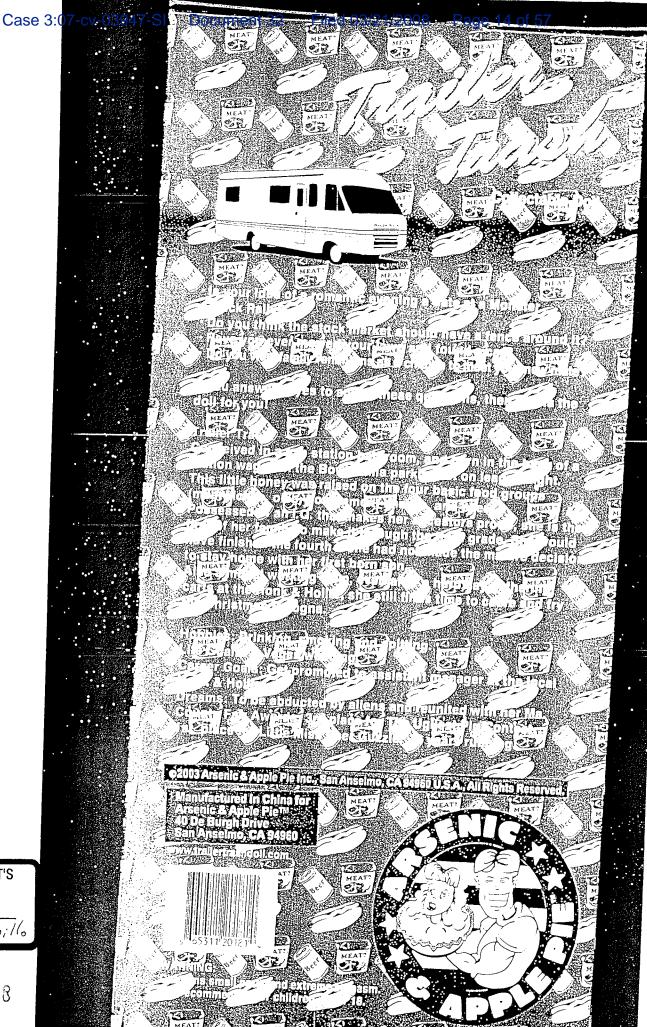
This contract will remain in effect for two years from date signed, or until a limited liability corporation has been formed.

William Tull Jr.

date

Paul Montwillo

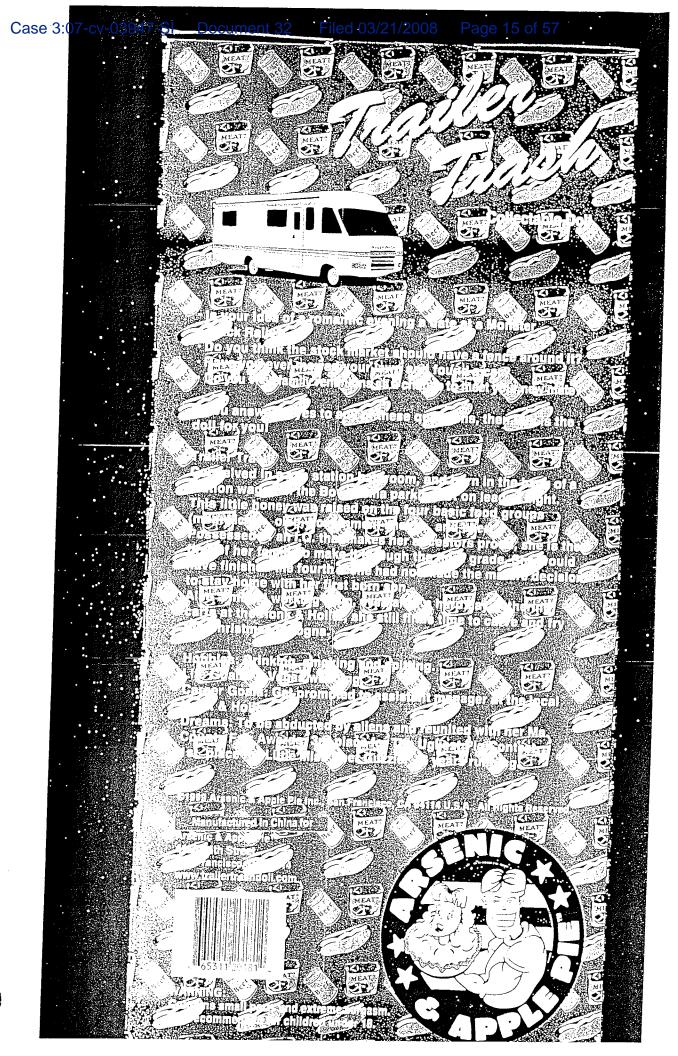
date



DEFENDANT'S
EXHIBIT

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23/10/08 Mowresillo

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(Official	Form	1)	FormB1	(9/01)

United States Bankruptcy Court NORTHERN DISTRICT OF CALIFORNIA		Voluntary Petition
Jame of Cebtor (if individual, enter Last, First, Middle):  MONTWILLO, PAUL	Name of Joint Debtor (Spouse)(L	_ast, First, Middle):
All Other Names used by Debtor in the last 6 years (include married, maiden, and trade names):  PAUL HANSEN	All Other Names used by the Join (include married, maiden, and tra	nt Debtor in the last 6 years ade names):
Soc. Sec./Tax I.D. No. (if more than one, state all): 089-50-0488	Soc. Sec./Tax I.D. No. (if more the	nan one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): 3638 22ND STREET SAN FRANCISCO CA 94114	Street Address of Joint Debtor (N	lo. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:  Mailing Address of Debtor (if different from street address):	County of Residence or of the Principal Place of Business: Mailing Address of Joint Debtor (	(if different from street address):
Location of Principal Assets of Business Debtor		DEFENDANT'S EXHIBIT  OF THE BOYES  DIE BOYES
(if different from street address above):  Information Regarding the D		93/16/08 Mou will 0
Debtor has been domiciled or has had a residence, principle place of preceding the date of this petition or for a longer part of such 180 day  There is a bankruptcy case concerning debtor's affiliate, general partr  Type of Debtor (Check all boxes that apply)	ys than in any other District.  ner, or partnership pending in this Dis  Chapter or Section of Ba	strict.  ankruptcy Code Under Which
✓ Individual(s)       ☐ Railroad         ☐ Corporation       ☐ Stockbroker         ☐ Partnership       ☐ Commodity Broker         Other       ☐ Other	the Petition is Filed  Chapter 7	(Check one box) rll
Nature of Debts (Check one box)  Consumer/Non-Business  Business	Filing Fee (Cl	
Chapter 11 Small Business (Check all boxes that apply)  Debtor is a small business as defined in 11 U.S.C. § 101  Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)	Must attach signed application	able to pay fee except in installments.
Statistical/Administrative Information (Estimates of Debtor estimates that funds will be available for distribution to unsect Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsect Debtor estimates that, after any exempt property is excluded and administrative Information (Estimates of Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available for distribution to unsect Debtor estimates that funds will be not funds available funds will be not funds with the funds will be not funds will be not funds with the funds will be not funds will be not funds with the funds will be not fund	ured creditors.	se # 02-30619 SFC7 Y
	inistrative	tor: Paul Montwillo
	inistrative   Jud ecured creditor   Jud 200-999 1000-over   True	ge: Thomas E. Carlson stee: E. Lynn Schoenmann
Estimated Assets \$0 to \$50,001 to \$100,001 to \$500,001 to \$1,000,001 to \$500,000 \$1 million \$10 million \$50 million  Estimated Debts \$0 to \$50,001 to \$100,001 to \$500,001 to \$1,000,001 to \$10,000,001 to \$500,000 \$1 million \$50 million	stonistrative ecured creditor  200-999 1000-over 341  \$50,000,001 to More than \$100 million \$100 million Filed Order  Clery North	ge: Thomas E. Carlson

(Official Form 1) (9/01)

Voluntary Petition	Name of Debtor(s): PAUL MONTWILLO	FORM B1, Page 2
This page must be completed and filed in every case)	PAGE MONTYVILLO	
Prior Bankruptcy Case Filed Within Last 6	Years (If more than one, attach a	dditional sheet)
Location Where Filed: NONE	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner o	r Affiliate of this Debtor (If more than one,	attach additional sheet)
Name of Debtor: NONE	Case Number:	Date Filed:
District: .	Relationship:	Judge:
Sig	natures	
Signature(s) of Debtor(s) (Individual/Joint)  I declare under penalty of perjury that the information provided in this petition is true and correct.  [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.  I request relief in accordance with the chapter of title 11, United States Code, specified in this petition  X  Signature of Debtor  X  Not Applicable  Signature of Joint Debtor  Telephone Number (if not represented by attorney)  Date	Exhib  (To be completed if debtor is require (e.g., forms 10K and 10Q) with the S Commission pursuant to Section 13 Exchange Act of 1934 and is request Exhibit A is attached and made a par  Exhib  (To be completed if debtor is an indiviconsumer debts) I, the attorney for the petition, declare that I have informed proceed under chapter 7, 11, 12 or 13 and have explained the relief available X  Not Applicable  Signature of Attorney for Debtor(s)  Exhibit Does the debtor own or have possession alleged to pose a threat of imminent and of safety?  Yes, and Exhibit C is attached and services.	ed to file periodic reports Securities and Exchange or 15(d) of the Security ting relief under chapter 11) rt of this petition.  Thit B  Thick B  T
Signature of Attorney  X Not Applicable  Signature of Attorney for Debtor(s)  Print Name of Attorney for Debtor(s)  Firm Name  Address	Signature of Non-Attorned I certify that I am a bankruptcy petition II U.S.C. §110, that I prepared this doct that I have provided the debtor with a contract Not Applicable  Printed Name of Bankruptcy Petition Pro-Not Applicable	preparer as defined in ument for compensation, and opy of this document.
Telephone Number	Social Security Number	
Date	Address	
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.	Names and Social Security numbers of a or assisted in preparing this document:	.ll other individuals who prepared
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.  X Not Applicable	If more than one person prepared this do sheets conforming to the appropriate offi	
Signature of Authorized Individual	Signature of Bankruptcy Petition Prepare	arer
Not Applicable Printed Name of Authorized Individual	Date	
Title of Authorized Individual	A bankruptcy petition preparer's failure to	o comply with the provisions
Date	of title 11 and the Federal Rules of Bankr fines or imprisonment or both. 11 U.S.C.	ruptcy Procedure may result in

Form B6-Cont. (6/90)

# United States Bankruptcy Court NORTHERN DISTRICT OF CALIFORNIA

ln re	PAUL MONTWILLO
	Debtor

Case No		
	(If known)	

### SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

#### AMOUNTS SCHEDULED

	AMOUNTS SCHEDUEED			JEED	
NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	YES	1	\$ 0.00		
B - Personal Property	YES	4	\$ 8099.00		
C - Property Claimed as Exempt	YES	1			
D - Creditors Holding Secured Claims	YES	1		\$ 0.00	
E - Creditors Holding Unsecured Priority Claims	YES	1		\$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	YES	2		\$ 17246.00	
G - Executory Contracts and Unexpired Leases	YES	1			
H - Codebtors	YES	1			
I - Current Income of Individual Debtor(s)	YES	1			\$ 920.00
J - Current Expenditures of Individual Debtor(s)	YES	1			\$ 2220.00
Total Number of ALL S		14			
	Total As	ssets > \$	8099.00		
		,	Total Liabilities > \$	17246.00	

(10/89)

In re PAUL MONTWILLO

D	e	Ь	to

Case No.	
	(If known)

### SCHEDULE B - PERSONAL PROPERTY

			(Continuation Sheet)		(Continuation Sheet)				
	TYPE OF PROPERTY	N C N E	DESCRIPTION AND LOCATION OF PROPERTY	Husband, Wife, Joint or Comm- unity	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION				
6	Wearing apparel.		CLOTHING 3638 22ND STREET, SAN FRANCISCO, CA 94114		300.00				
7	Furs and jewelry.	х			0.00				
8	Firearms and sports, photographic, and other hobby equipment.	X			0.00				
9	Interests in insurance policies.  Name insurance company of each policy and itemize surrender or refund value of each.	X			0.00				
10	Annuities, Itemize and name each issuer.	X			0.00				
11	Interests in IRA, ERISA, keogh, or other pension or profit sharing plans. Itemize.	Х			0.00				
12	Stock and interests in incorporated and unincorporated businesses. Itemize.	Х			0.00				
13	Interests in partnerships or joint ventures. Itemize.		ARSENIC & APPLE PIE LLC 432 CASTRO ST, SAN FRANCISCO, CA 94114		6000.00				
14	Government and corporate bonds and other negotiable and nonnegotiable instruments.	Х	4		0.00				

FORM B6B - Cont. (10/89)

In re PAUL MONTWILLO

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v	C	u	w

Case No.	×
	(If known)

# SCHEDULE B - PERSONAL PROPERTY (Continuation Sheet)

			(Continuation Sheet)		
	TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	Husband, Wife, Joint or Comm- unity	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
15	Accounts receivable.	Х			0.00
16	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			0.00
17	Other liquidated debts owing debtor including tax refunds. Give particulars.	Х			0.00
18	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			0.00
19	Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	х			0.00
20	Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	x			0.00
21	Patents, copyrights, and other intelectual property. Give particulars.	X			0.00
22	Licenses, franchises, and other general intangibles. Give particulars.	X			0.00

FORM B6	B - Cont.
(10/89)	

In re	PAL	JL	MON	TWII	10
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Case No.	
	(lf known)

### SCHEDULE B - PERSONAL PROPERTY

			(Continuation Sheet)		
	TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	Husband, Wife, Joint or Comm- unity	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23	Automobiles, trucks, trailers, and other vehicles and accessories	X			0.00
24	Boats, motors, and accessories.	х			0.00
25	Aircraft and accessories.	х			0.00
26	Office equipment, furnishings, and supplies.	х			0.00
27	Machinery, fixtures, equipment and supplies used in business.	х			0.00
28	Inventory.	Х	·		0.00
29	Animals.	х			0.00
30	Crops - growing or harvested. Give particulars.	Х			0.00
31	Farming equipment and implements.	Х			0.00
32	Farm supplies, chemicals and feed.	х			0.00
33	Other personal property of any kind not already listed. Itemize.	Х			0.00
			continuation sheets attached Tot	tal >	8099.00

(Include amounts from any continuation sheets attached. Report totals also on Summary of Schedules.)

FORM B6C (6/90)

ı re	PAUL	MONTWIL	LO
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Debtor

Case No.
(If known)

### SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under: (Check one box)

11 U.S.C. § 522(b)(1): Exemptions provided in U.S.C. § 522(d). Note: These exemptions are available only in certain states.

11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

All references are to California Code of Civil Procedures unless otherwise noted .

DESCRIPTION OF PROPERTY	SPECIFIC LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
CLOTHING	703.140(B)(3);	300.00	300.00
CHECKING ACCOUNT	703.140(B)(10)(A);	400.00	400.00
ARSENIC & APPLE PIE LLC	703.140(B)(5);	6000.00	12000.00
COMPUTER	703.140(B)(3);	899.00	899.00
FURNITURE/APPLIANCES	703.140(B)(3);	500.00	500.00
	•		

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Form B6 - Cont. (12/94)

In re PAUL MONTWILLO

Debtor

Case No.	
	(If known)

## DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER P	THE STATE OF THE INDIVIDUAL DEBTOR
I declare under penalty of perjury that I have read the	foregoing summary and schedules consisting of 15
sheets, and that they are true and correct to the best of my	knowledge, information and belief. (Total shown on sumarry page plus 1.)
Date 3 10 0	
	Signature: \( \langle
Data	Debtor
Date	Signature:
	(Joint Debtor, if any)
~~~~~~	[If joint case, both spouses must sign.]
CERTIFICATION AND SIGNATURE OF NO	ON-ATTORNEY BANKRUPTY PETITION PREPARER (Sec. 11 U.S.C. §1
I certify that I am a bankruptcy petition preparer as defined in 11 U, provided the debtor with a copy of this document.	S.C. §110,that I prepared this document for compensation, and that I have
Not Applicable	
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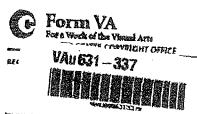
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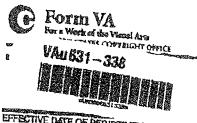
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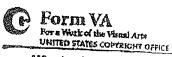
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## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17. United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America



VA 1-271-343



EFFECTIVE DATE OF REGISTRATION

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Paul Montwillo Managing Partner Arsenic & Apple Pie, LLC 3638 22nd Street San Francisco, CA 94114

David Wong Attorney at Law 320 Montford Ave. Mill Valley, CA 94941

July 13, 2002

Re: Arsenic & Apple Pie, LLC

Dear Mr Wong:

Pursuant to Section 9.1 of the operating agreement I do not concede to dissolution of the company at

Please send me detailed copies of all the books from Arsenic & Apple Pie, also any and all contracts, sales documents, and product orders the company has participated or intends to participate in.

I hold the copyrights to all my designs, not the company. If the company or Mr. Tull would be interested, I would be willing to give exclusive license of my designs (Trailer Trash Doll, Blonde Drag Queen, Red Head Drag Queen, Talking Pregnant Trailer Trash Doll, and Male Mullet Trailer Trash Doll) for \$10,000 each, provided payment of \$50,000 is made within ten business days.

Pursuant of Section 2.4 of the operating agreement, I expect you to act in the best interest of the company. Putting Mr. Tull's well being ahead of the well being of the company would surely be considered a

Sincerely,

Paul J. Montwillo Managing Partner

Arsenic & Apple Pie, LLC

**DEFENDANT'S EXHIBIT** 

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  3
                    UNITED STATES DISTRICT COURT
  4
                  NORTHERN DISTRICT OF CALIFORNIA
  5
  6
    PAUL MONTWILLO, an
    individual,
 7
                         Plaintiff,
 8
          vs.
                                            No. C 07 3947 SI
    WILLIAM TULL; DANIEL GIBBY; GIBBY )
                                            Pages 1 thru 124
    NOVELTIES, LLC dba ARSENIC & APPLE )
    PIE, a California Limited
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                                                 Volume I
    Liability Corporation and DOES 1
11
    through 20, inclusive,
12
                         Defendants.
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                            Deposition of
16
                           PAUL MONTWILLO
17
                           March 10, 2008
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    Reported By:
20
    JAN BROWN JONES # 4685
21
22
                       JAN BROWN & ASSOCIATES
                   CERTIFIED SHORTHAND REPORTERS
23
24
    701 Battery St., 3rd Floor, San Francisco, California 94111
                 (415) 981-3498 or (800) 522-7096
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. 20:09	. 1	7	Towns and I have been been as a survey of the survey of th
14:20:12		A.	I recall having it removed because for that
14:20:12	2		reason.
14:20:13	3	Q.	Okay. And you discussed removing some of the
14:20:15	4		language with Mr. Tull?
14:20:18	5	Α.	Yes. We were sending back and forth drafts and I
14:20:23	6		remember we were making notes on them.
14:20:26	7	Q.	So you asked that certain language be removed?
14:20:28	8	A.	Yes.
14:20:29	9	Q.	But you don't recall what the language was?
14:20:34	10	A.	Not precisely, no. It was a very long time ago.
14:20:38	11	Q.	Do you have copies of any of those communications
14:20:41	12		between you and Mr. Tull and in particular the one
. 30:44	13		in which you made a request that this language be
14:20:47	14		removed?
14:20:48	15	A.	I do not. I threw all the drafts away.
14:20:51	16	Q.	So you threw all the drafts away. And you don't
14:20:55	17		recall what the language was?
14:20:57	18	A.	Not precisely, no.
14:20:58	19	Q.	Do you recall in general what it said?
14:21:00	20	A.	Yes. It was something that concerned me that it
14:21:04	21		was transferring my intellectual property rights to
14:21:08	22		the corporation and that's why I had it removed.
14:21:11	23	Q.	Okay. Well, let's go back then to this question of
14:21:17	24		a license agreement. Aside from having some
: ?1:19	25		language removed, which you have indicated that you

21:22	1		requested be done in the LLC, in the operating
14:21:31	2		statement, the LLC, is there any specific statement
14:21:35	3		that reserves intellectual property rights, and in
14:21:39	4		particular copyrights, to you personally?
14:21:43	5	A.	There is not.
14:21:44	6	Q.	Is there anything in writing prior to the filing of
14:21:49	7		this lawsuit in which you have in writing advised
14:21:54	8		Mr. Tull that you retain ownership of the
14:21:59	9		copyrights to the doll designs?
14:22:02	10	A.	Yes.
14:22:02	11	Q.	What?
14:22:03	12	A.	A letter to Mr. Wong.
. ?2:05	13	Q.	A letter to Mr. Wong. When was that?
14:22:10	14	Α.	I don't recall exactly. It was during the time
14:22:15	15		when Mr. Wong and Mr. Tull were trying to dissolve
14:22:23	16		the corporation without my consent.
14:22:25	17	Q.	All right. So the dissolution of the Arsenic &
14:22:29	18		Apple Pie LLC, I believe took place in 2004. Does
14:22:36	19		that refresh your recollection about the year?
14:22:39	20	A.	I guess so. I mean, there's so much that's
14:22:44	21		happened, I don't recall exact dates.
14:22:47	22		MR. SOMMERS: Don't guess.
14:22:48	23		THE WITNESS: I don't recall.
14:22:49	24		MR. SOMMERS: And if you don't know the
72:50	25		exact time frame, then say that you don't know and
			F.0

73:41	1	produced.
14:23:42	2	THE WITNESS: Yes, definitely.
14:23:43	3	MR. WONG. The letter he sent to me?
14:23:45	4	MR. GREENBERG: The letter he says he
14:23:46	5	wrote to you in connection with the dissolution
14:23:47	6	of
14:23:51	7	MR. SOMMERS: I'm sure it's part of our
14:23:52	8	Rule 26. And it was definitely part of an exhibit
14:23:55	9	in the motion to disqualify Mr. Wong.
14:24:08	10	MR. GREENBERG: While Mr. Wong is taking
14:24:09	11	a look for that, let me ask you a different
14:24:12	12	question then.
. ?4:13	13	Q. So are we clear then that neither in the
14:24:16	14	partnership agreement of '97 nor in the operating
14:24:20	15	agreement for the LLC, was there any statement made
14:24:24	16	that you claimed ownership to the copyrights in
14:24:28	17	these doll designs. Is that correct?
14:24:31	18	MR. SOMMERS: Objection as to the scope
14:24:32	19	of the question.
14:24:34	20	MR. GREENBERG: Okay. Is that correct?
14:24:37	21	MR. SOMMERS: Go ahead. I mean, I'm not
14:24:38	22	clear about the objection is, are you talking
14:24:41	23	about the operating agreement or are you talking
14:24:43	24	about any statement?
1 34:44	25	MR. GREENBERG: No, I'm talking about the
		52

1 4:	: 45	1	operating agreement within the four corners of
14:24:	: 48	2	the operating agreement and the partnership
14:24:	: 49	3	agreement, two documents.
14:24:	:51	4	MR. SOMMERS: All right. Then the
14:24:	: 52	5	document speaks for itself.
14:24:	: 53	6	MR. GREENBERG: Right.
14:24:	: 54	7	THE WITNESS: No.
14:24:	:54	8	MR. GREENBERG:
14:24:	: 55	9	Q. There is no statement of ownership by you of the
14:24:	:57	10	copyright in the designs, correct?
14:24:	:59	11	MR. SOMMERS: Objection, the document
14:25:	: 00	12	speaks for itself.
1 5:	: 03	13	MR. GREENBERG: Okay.
14:25:	:03	14	Q. Is that correct?
14:25	: 03	15	A. There is no no, there is no statement, that's
14:25	:07	16	correct.
14:25	:08	17	Q. Okay.
14:25	:09	18	MR. WONG: By the way, Counsel
14:25	:13	19	MR. GREENBERG: This is off the record.
14:25	:13	20	
14:25	:13	21	(Off the record at 2:25 p.m. and
14:25	:17	22	back on the record at 2:31 p.m.)
14:31	:19	23	
14:31:	:19	24	MR. GREENBERG: Back on the record.
1 .1:	:20	25	
			53

```
3:56
         1
                 something.
14:53:58
         2
            Q.
                 I'm sorry?
14:53:59
         3
                 It's a sticker.
            Α.
14:54:04
         4
                 Okay. Do you know what was there before?
            Q.
14:54:07
         5
                 I don't know what is under there.
            Α.
14:54:11
         6
                 You don't know what is under it?
            Ο.
14:54:12
         7
            Α.
                 No.
14:54:13
         8
                 Was there a sticker on the first one regarding the
            Q.
14:54:19
                 copyright date or is it printed on the box?
         9
14:54:22
        10
                 It's printed on the box.
            Α.
14:54:23
        11
                 Okay. And you oversaw the production of these
            Q.
14:54:26
        12
                 boxes?
   4:27
       13
            A.
                 Yes.
14:54:29
                 If you owned the copyrights to these designs, why
        14
            Q.
14:54:34
       15
                 does the copyright notice say it's copyright
14:54:37
       16
                 Arsenic & Apple Pie on both of these?
14:54:43
       17
                 I don't know. I own the copyrights to the dolls.
            Α.
14:54:57
                       Now, from the 1997 partnership agreement
       18
            Q.
14:55:03
                 date, through to the dissolution of the LLC in
       19
14:55:09
       20
                 2004, am I correct that all costs for the design,
14:55:15
       21
                 development, manufacture and distribution of the
14:55:23
       22
                 dolls was paid for by Bill Tull?
14:55:23
       23
           Α.
                 Bill Tull made a loan to the company, yes.
14:55:26
       24
                 To cover those costs?
           0.
1 5:28
       25
                         So the company paid for them.
           Α.
```

55:32	1	Q.	Right. Using the money he had loaned?
14:55:35	2	A.	Uh-huh.
14:55:35	3	Q.	Is that right?
14:55:36	4	A.	Yes.
14:55:37	5	Q.	You didn't advance any money for those costs, did
14:55:41	6		you?
14:55:42	7	A.	No.
14:55:44	8	Q.	Did you understand that you had any obligation
14:55:46	9		personally to pay for any of those costs?
14:55:50	10	A.	No.
14:56:35	11		MR. GREENBERG: Let's mark this as next
14:56:36	12		in order.
14:56:37	13		
14:56:38	14		(Whereupon the Voluntary
14:56:38	15		Petition United States Bankruptcy Court Northern
	13		District of California was
14:56:38	16		marked for identification as
14:56:40	17		Defendants' Exhibit No. 6.)
14:57:15	18		MR. GREENBERG: All right. Good.
14:57:16	19	Q.	Mr. Montwillo, I've handed you a document which
14:57:19	20		we've marked as Exhibit 6 and which I'll represent
14:57:22	21		for the record is entitled "Voluntary Petition,
14:57:27	22		United States Bankruptcy Court, Northern District
14:57:30	23		of California" and ask you to take a few moments to
14:57:32	24		go through this and then I'll ask you a couple of
7:35	25		questions about it.

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. )7:30	1		page 3, and this would be page 5 of this yes,
15:07:35	5 2		page 5 of this document. I want to direct your
15:07:38	3		attention down to item number 21 of the document.
15:07:42	4		And it asks under "Type of Property" for "Patents,
15:07:46	5 5		copyrights, and other intellectual property," and
15:07:48	6		then you are asked to give particulars.
15:07:51	7		The box list identifying "None" is
15:07:56	8		checked and the dollar value is zero.
15:07:58	9		Do you see that?
15:07:59	10	A.	Yes.
15:07:59	11	Q.	As of two thousand March of 2002, when you
15:08:05	12		signed this document, was it true that you owned no
78:08	13		copyrights of any value?
15:08:12	14		MR. SOMMERS: Objection, calls for a
15:08:14	15		legal conclusion, calls for a financial conclusion,
15:08:17	16		speculation.
15:08:18	17		THE WITNESS: No.
15:08:18	18		MR. GREENBERG:
15:08:18	19	Q.	It's not true?
15:08:21	20	A.	I didn't I did this without a lawyer.
15:08:24	21	Q.	I understand.
15:08:25	22	A.	I did not know what I was doing, but if I had to
15:08:28	23		list every piece of artwork I've ever made in my
15:08:30	24		life, I mean, it would be impossible, you know, to
78:34	25		list all of that.

I guess I glossed over it. I didn't know what I was doing.

Q. Okay. And then underneath 21, number 22 asks you to describe "Licenses, franchises, and other general intangibles. Give particulars." Again, it indicates "None" and has a zero dollar figure.

Given your prior testimony today that you granted a license to the company to use your designs during this time period, is this a correct statement that you owned no licenses as of March '02?

MR. SOMMERS: Objection, calls for a legal conclusion in that before he discussed the license in layman's terms and he described exactly what he meant and now it's being used in a different format and I don't think he can answer it.

MR. GREENBERG: No, I'm just asking why he didn't indicate something that he believed he had.

THE WITNESS: I didn't know what I was doing.

MR. GREENBERG: Okay.

THE WITNESS: I didn't have a lawyer, I did this without a lawyer. I didn't know what I

19:40	1		was doing.
15:09:41	2		MR. GREENBERG:
15:09:58	3	Q.	So I'm accurate in saying that in this bankruptcy
15:10:03	4		filing you didn't indicate any ownership interest
15:10:06	5		in the doll designs, did you?
15:10:10	6	A.	Apparently not. I didn't indicate ownership of
15:10:23	7		anything I ever designed in here. I'm not a
15:10:28	8		lawyer.
15:10:31	9	Q.	I want to direct your attention, Mr. Montwillo,
15:10:33	10		back to Exhibit 4, which I believe you have right
15:10:37	11		under the bankruptcy schedule there, the letter
15:10:40	12		that you wrote, the July 2004 letter. It's dated
1 10:44	13		July 13, 2004.
15:10:47	14	A.	Uh-huh. Yes.
15:10:48	15	Q.	In paragraph three you make the statement, "I hold
15:10:51	16		the copyrights to all my designs, not the company."
15:10:57	17		As of July 13, 2004, had you registered
15:11:02	18		copyright designs for all of these different listed
15:11:07	19		designs?
15:11:08	20	Α.	I don't recall the date I registered copyrights,
15:11:11	21		but they are probably in the room.
15:11:22	22	Q.	Yes, we're getting there.
15:11:23	23		
15:12:27	24		(Whereupon the Certificates of Registration were marked for
12:27	25		identification as Defendants'

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3	3	15:28:19
4	4	15:28:20
5	5	15:28:22
6 Q	6	15:28:23
7	7	L5:28:24
8	8	L5:28:27
9	9	5:28:31
0	10	.5:28:35
1	11	.5:28:39
2	12	5:28:39
3	13	8:46
4	14	5:28:48
5	15	5:28:51
6	16	5:28:56
7	17	5:28:59
3	18	5:29:03
9	19	5:29:06
)	20	5:29:09
L Q.	21	5:29:10
2	22	5:29:12
3	23	5:29:14
Α.	24	5:29:18
Q.	25	9:21

conclusion, I'm asking for your lay understanding.

MR. SOMMERS: Now are you talking about what he understands it to be now or what he understood it to mean --

MR. GREENBERG: Fair enough.

Q. When you checked this box, what was your understanding, lay understanding, not legal, of what the term "made for hire" meant?

MR. SOMMERS: Objection, speculative.

THE WITNESS: Well, now -- or I guess
then, I mean, I don't think my opinion of work for
hire has changed. If I do a custom piece for
someone that has not yet been created, that would
be considered work for hire. Like if I do
someone's living room, that's a work for hire.

If I do something because I want to do it, that's not a work for hire, or I produce it on my own, it's not a work for hire. Or I produce on commissions is a work for hire.

MR. GREENBERG: Okay.

- Q. So when you were checking this box "No," you checked this box no because you didn't do these designs as a commission. Is that right?
- A. Right. They were actually portraits.
- Q. They were --

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.1	1	:42	15:30	-
.2	1	:44	15:30	1
.3	1	:45	30:	-
4	1	:45	15:30:	1
5	1	:57	15:30:	1
6	1	80	15:31:	1
7	1	14	15:31:	1
8	1	17	L5:31:	1
9	1	24	15:31:	1
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independent contractor?

- A. I'm sorry. Again?
- Q. Sure. Did those terms "employee/independent contractor" enter into your consciousness when you were making a determination to check the box and say no, these aren't works for hire, were you thinking about employer/independent contractor?

MR. SOMMERS: Objection, speculation.

THE WITNESS: I was thinking --

MR. SOMMERS: Vague. Go ahead.

THE WITNESS: Neither. That's not what I was thinking.

MR. GREENBERG: That's what I wanted to know. Thank you.

Q. Now, with the exception of the pregnant doll and the male doll, the first three designs, Trailer Trash Doll, Blonde Drag Queen and Red Head Drag Queen, is it accurate to say that your contribution to those designs was with respect to wigs, clothing and facial make-up?

MR. SOMMERS: Objection, compound. Do you want to ask them individually?

MR. GREENBERG: I'm trying to get to the totality of what he designed. I can ask it that way too.

31:46 1 MR. SOMMERS: Again, why don't you do it 15:31:47 2 that way, not that globally. 15:31:47 3 MR. GREENBERG: 15:31:48 4 Other than the body --Q. 15:31:49 5 Right. Α. 15:31:51 6 Well, let's back up. With respect to those three Q. 15:31:53 7 dolls, Trailer Trash Doll, Blonde Drag Queen and 15:31:56 8 Red Head Drag Queen, you didn't design the body. 15:31:59 Is that correct? 15:32:01 10 Α. That's correct. 15:32:03 11 What did you design on those three dolls? Q. 15:32:10 12 The clothing. The pants. The accessories. A. 32:21 13 Q. Okay. 15:32:22 14 MR. SOMMERS: Was there anything besides 15:32:23 15 the body that you didn't design? 15:32:26 16 The only thing I didn't THE WITNESS: 15:32:27 17 design was the body. We used standard bodies. Ι 15:32:30 18 designed everything else. 15:32:34 19 MR. GREENBERG: 15:32:34 20 And taking a look at the box we've got here, which Q. 15:32:40 21 we're not going to be able to attach to the record, 15:32:42 22 but I'll just represent -- and I think that we've 15:32:45 23 already concluded that this is one of the designs, 15:32:47 **24** Trailer Trash Edition 1. Is that correct? <sup>32:50</sup> **25** Yes. Α.

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1 32:53	<sup>3</sup> 1	Q.	This particular design features the model, the do	11
15:33:0	2		in what looks to be a representation of blue jear	1
15:33:06	3		shorts. I believe you previously made reference	to
15:33:11	4		these as "Daisy May" shorts?	
15:33:13	5	A.	Daisy Duke shorts.	
15:33:16	6	Q.	Daisy Duke shorts. And does that come from "The	
15:33:19	7		Dukes of Hazard" television show?	
15:33:22	8	A.	Yes.	
15:33:22	9	Q.	The character of Daisy Duke? That's how you were	<u>}</u>
15:33:26	10		describing them.	
15:33:27	11	A.	There was a reference, yes.	
15:33:33	12	Q.	And the doll also is wearing a red and white	
. 33:38	13		checked halter top. Is that how you would	
15:33:42	14		characterize that garment?	
15:33:46	15	A.	Well, I guess halter top isn't correct, but	
15:33:49	16	Q.	How would you describe it?	
15:33:51	17	A.	I can't remember the correct word for that.	
15:33:54	18	Q.	Is it a crop top?	
15:33:55	19	A.	Crop top maybe, something. I don't know. Skimpy	,
15:33:59	20		skimpy thing on top.	
15:34:02	21	Q.	Right. And the hairdo of the doll is pig tails?	
15:34:07	22	A.	Yes.	
15:34:08	23	Q.	Pig tails and bangs?	
15:34:11	24	A.	And black roots, yes.	
34:12	25	Q.	And notably the black roots.	
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34:15	1	A.	And the cigarette, yes. And the blue eye shadow.
15:34:16	2	Q.	Okay. Cigarettes, blue eye shadow.
15:34:23	3		Have you ever seen characters in
15:34:26	4		literature, movies or any other genre, where these
15:34:32	5		elements are incorporated to convey rural or poor
15:34:38	6		white individuals?
15:34:39	7	A.	Well, that's what I was trying to convey; I mean,
15:34:42	8		it obviously stems from a stereotype.
15:34:48	9	Q.	And these elements are elements of that stereotype,
15:34:52	10		right?
15:34:53	11	A.	Yes.
15:34:53	12	Q.	Would it be fair to say that with respect to the
34:56	13		Blonde Drag Queen and the Red Head Drag Queen, that
15:34:59	14		you attempted also to utilize similar genre
15:35:05	15		stereotypes to convey the impression of what the
15:35:08	16		doll was?
15:35:09	17		MR. SOMMERS: Objection, horribly vague.
15:35:11	18		Horribly, horribly vague.
15:35:16	19		THE WITNESS: No.
15:35:17	20		MR. GREENBERG: Okay.
15:35:19	21	Q.	With respect to the Blonde Drag Queen, what
15:35:23	22		elements did you add to that design?
15:35:28	23	A.	Everything but the body.
15:35:30	24	Q.	And what were those elements; what is the
75:32	25		everything?
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35:35	1	A.	Dress, purse, hair, makeup. Everything.
15:35:42	2		Packaging. Whatever.
15:35:46	3	Q.	And how would it be that someone looking at that
15:35:50	4		doll would know that it was supposed to be a drag
15:35:53	5		queen as opposed to an actual female?
15:36:05	6	A.	It has a male body. It's exaggerated makeup. It's
15:36:16	7		a drag queen.
15:36:19	8	Q.	From your expression
15:36:21	9	A.	I'm like, what? It's a drag queen.
15:36:24	10	Q.	Right. My sense is that the elements that you
15:36:26	11		incorporated were so clear that anyone looking at
15:36:29	12		it would know it was a drag queen. Is that right?
36:32	13	A.	That's correct.
15:36:33	14	Q.	And in order for that to happen, people looking at
15:36:38	15		this have to have a stereotype in mind of what a
15:36:42	16		drag queen is. Isn't that also true?
15:36:45	17		MR. SOMMERS: Objection, argumentative.
15:36:46	18		THE WITNESS: No.
15:36:47	19		MR. GREENBERG: No?
15:36:47	20		THE WITNESS: No.
15:36:48	21		MR. SOMMERS: Calls for opinion.
15:36:53	22		MR. GREENBERG: Okay.
15:36:59	23	Q.	How would you characterize the hair on the Blonde
15:37:01	24		Drag Queen?
77:02	25		MR. SOMMERS: Objection, vague.

37:06	1		MR. GREENBERG:
15:37:06	2	Q.	Well, what choice did you make as to what the hair
15:37:09	3		should be for the Blonde Drag Queen?
15:37:11	4		MR. SOMMERS: Objection, vague. Go
15:37:12	5		ahead.
15:37:13	6		THE WITNESS: I chose long blonde hair.
15:37:15	7		MR. GREENBERG:
15:37:15	8	Q.	Why?
15:37:17	9	A.	I knew I was going to do a white dress. So a lot
15:37:23	10		of drag queens like to do Marilyn, so I put the
15:37:27	11		blonde in a white dress.
15:37:30	12	Q.	Sort of to evoke the drag queen version of Marilyn?
37:33	13	A.	Yes.
15:37:38	14	Q.	Was the Red Head Drag Queen evocative of any
15:37:43	15		celebrity?
15:37:47	16	A.	Brian O'Rourke.
15:37:48	17	Q.	And who is that?
15:37:49	18	A.	A friend of mine.
15:37:51	19	Q.	And does Brian O'Rourke on occasion attire himself
15:37:57	20		as a drag queen?
15:37:58	21	A.	Yes.
15:38:00	22	Q.	So this was designed to look like him?
15:38:03	23	A.	Yes.
15:38:06	24	Q.	Did you get a license from him?
78:09	25	A.	No. No, I did not. I believe he has the original
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01:44	1	Q.	Coing back to Exhibit 4 Twl- 12 2004 this is
16:01:49		×.	Going back to Exhibit 4, July 13, 2004, this is
	4	!	your letter to Mr. Wong. You state in the third
16:01:56	3		paragraph, "I hold the copyrights to all my
16:01:59	4		designs, not the company." We've gone over that
16:02:01	5		once or twice before.
16:02:04	6		Was it your understanding, Mr. Montwillo,
16:02:08	7		that as of July 13, 2004, Arsenic & Apple Pie
16:02:16	8		intended to continue to sell the dolls that you
16:02:22	9		claim you held the copyrights to?
16:02:24	10	A.	That was a response. I don't recall the letter it
16:02:28	11		was in response to. I was addressing a letter I
16:02:30	12		received from Mr. Wong.
. 92:32	13	Q.	Okay. After July 13, 2004, was it your
16:02:36	14		understanding that Arsenic & Apple Pie continued to
16:02:38	15		sell the designs the dolls that embodied the
16:02:43	16	:	designs you claim to own?
16:02:45	17	A.	Yes.
16:02:53	18	Q.	Did you prior to the filing of the copyright
16:02:56	19		infringement lawsuit in this case, ever send notice
16:03:01	20		to Arsenic & Apple Pie that you believed that they
16:03:05	21		were violating your copyright?
16:03:09	22	A.	You are looking at it.
16:03:11	23	Q.	Okay. So in your view this letter of July 13,
16:03:14	24		2004, was you sending notice to them that they were

violating your copyright?

<sup>73:18</sup> **25** 

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35:02	1	A.	I'm not sure if Alan prepared them or who prepared
16:35:04	2		them, but I got them, yes.
16:35:07	3	Q.	And did you review those?
16:35:08	4	A.	When I got them; yes, I did.
16:35:10	5	Q.	So did that give you a sense what the financial
16:35:13	6		status of the company was?
16:35:15	7	A.	Well, there were some years where they said I made
16:35:18	8		money and I didn't, that I was paid. I got audited
16:35:21	9		by the IRA.
16:35:22	10	Q.	You got audited by the IRA in connection with what?
16:35:27	11	A.	With not claiming enough money that they that
16:35:31	12		was said I was paid.
35:33	13	Q.	So the company reported payment or income to you
16:35:38	14		that you are saying you didn't receive?
16:35:41	15	A.	That's correct.
16:35:42	16	Q.	In what amount?
16:35:44	17	A.	I don't recall.
16:35:46	18	Q.	What was the outcome of the audit?
16:35:48	19	A.	I was okay.
16:35:50	20	Q.	You weren't required to pay any tax?
16:35:53	21	A.	No.
16:35:55	22	Q.	Any penalties?
16:35:58	23	A.	I don't think so, no.
16:36:00	24	Q.	Did any of the returns that you received from the
7 36:03	25		company ever indicate that you were being paid
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1	`6:05	1	royalties?
16:	36:08	2	A. Royalties?
16:	36:09	3	Q. Yes.
16:	36:10	4	A. No. I don't think so. I don't recall. It just
16:	36:22	5	said I was paid, period, that's all it said. It
16:	36:25	6	didn't say for what.
16:	36:31	7	MR. GREENBERG: We're done. Thank you.
16:	36:36	8	
16:	36:36	9	(Whereupon the deposition was
16:	36:36	10	concluded at 4:36 p.m.)
16:	36:36	11	
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1	`6:36	13	PAUL MONTWILLO
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